

MAY 28 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RITO CASTRO-PARRA,

Defendant - Appellant.

No. 05-10174

D.C. No. CR-03-01851-FRZ

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted May 20, 2008^{**}

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Rito Castro-Parra appeals from the 72-month sentence imposed following his guilty-plea conviction for possession with intent to distribute 5 kilograms or

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

more of cocaine, in violation of 21 U.S.C. § 841, conspiracy to possess with intent to distribute 5 kilograms or more of cocaine, in violation of 21 U.S.C. §§ 841, 846, importation of 5 kilograms or more of cocaine, in violation of 21 U.S.C. §§ 952, 960, and conspiracy to import 5 kilograms or more of cocaine, in violation of 21 U.S.C. §§ 952, 960, and 963. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Castro-Parra contends that the district court misunderstood its discretion to impose a lower sentence based on aberrant conduct. The district court did not procedurally err in this regard. *See Gall v. United States*, 128 S. Ct. 586, 597 (2007).

Castro-Parra also contends that the district court erred by enhancing his sentence using a drug quantity that was neither admitted by him, nor proven to a jury beyond a reasonable doubt. This contention is foreclosed by *United States v. Kilby*, 443 F.3d 1135, 1140 (9th Cir. 2006). We conclude that the district court's drug quantity finding was supported by a preponderance of the evidence. *See id.*

AFFIRMED.